ambulance crew vehicle for purposes of this paragraph (k)(7).

(iii) *Firefighter.* The term *firefighter* means an individual who is employed by a governmental unit, or any agency or instrumentality thereof, that is responsible for firefighting, rescue activity, or the provision of emergency medical care, and other related emergency services to prevent injury to persons or property and has the official authority to engage in fire suppression and provide related emergency services.

(iv) *Member of a rescue squad or ambulance crew.* For purposes of this paragraph (k)(7), the term *member of a rescue squad or ambulance crew* has the same meaning as in 34 U.S.C. 10284(10)(A).

* * * * *

(9) * * *

(v) *Example 5.* Emergency medical technician, X, is a *member of a rescue squad* employed by City M. X is provided with an unmarked vehicle (equipped with sirens and medical equipment) for use in responding to emergencies. X, along with other members of the rescue squad, is ordinarily on duty for a regular shift and on call during the other hours of the day. X is required to use the unmarked rescue squad vehicle to commute to X's home in City M. The rescue squad's official policy regarding unmarked rescue squad vehicles prohibits personal use (other than commuting) of the vehicles outside the city limits. When not using the vehicle on the job, X uses the vehicle only for commuting, personal errands while commuting, and personal errands within City M. All use of the vehicle by X conforms to the requirements of paragraph (k)(7) of this section. Therefore, the value of that use is excluded from X's gross income as a working condition fringe and the vehicle is not subject to the substantiation requirements of section 274(d).

* * * * *

(m) *Applicability date.* This section applies to expenses paid or incurred after December 31, 1997. However, paragraph (j)(3) of this section applies to expenses paid or incurred after September 30, 2002, and paragraph (k) of this section applies to clearly marked public safety officer vehicles, as defined in paragraph (k)(3) of this section, only with respect to uses occurring after May 19, 2010. The rules of paragraphs (k)(2)(ii)(S), (k)(7) and (k)(9)(v) of this section apply to taxable years ending on or after March 20, 2026.

Frank J. Bisignano,

Chief Executive Officer.

Approved: February 17, 2026.

Kenneth J. Kies,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2026–05525 Filed 3–19–26; 8:45 am]

BILLING CODE 4831–GV–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2510

RIN 1210–AC36

Retirement Security Rule: Definition of an Investment Advice Fiduciary: Notice of Court Vacatur

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule; technical amendment.

SUMMARY: This document implements the judicial vacatur of the Department's 2024 final rule defining who is a ''fiduciary'' under the Employee Retirement Income Security Act of 1974. This document also reflects the judicial vacatur of the Department's 2024 amendments to Prohibited Transaction Exemption 2020–02 (PTE 2020–02) and the judicial vacatur of portions of the preamble to PTE 2020–02; and republishes in full the operative text of PTE 2020–02 (as originally published on December 18, 2020).

DATES: Effective April 20, 2026.

FOR FURTHER INFORMATION CONTACT: Fred Wong, Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA) (202) 693–8500; Susan Wilker, Office of Exemption Determinations, EBSA (202) 693–8557. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: This **SUPPLEMENTARY INFORMATION** contains two parts. Part I includes background information and explains the reasons for the actions being taken. Part II republishes the operative text of PTE 2020–02 as originally published on December 18, 2020. The amendatory text contains the housekeeping amendments to title 29 of the Code of Federal Regulations (CFR).

Part I. Background

1. 2024 Fiduciary Rule and Related Litigation

On April 25, 2024, the Department of Labor published a final regulation, titled ''Retirement Security Rule: Definition of an Investment Advice Fiduciary'' (2024 Fiduciary Rule), defining who is a ''fiduciary'' of an employee benefit plan under section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 (ERISA) as a result of giving investment advice to a plan or its participants or beneficiaries for a fee or other compensation.[1] The 2024 Fiduciary Rule also applied to the definition of a ''fiduciary'' of a plan (including an individual retirement account (IRA)) under section 4975(e)(3)(B) of the Internal Revenue Code of 1986 (Code). The 2024 Fiduciary Rule replaced regulatory text, dating back to 1975, that set out a five-part test for determining fiduciary status under section 3(21)(A)(ii) of ERISA (Five-part Test Regulation).[2] Also on April 25, 2024, the Department adopted amendments to Prohibited Transaction Exemption (PTE) 2020–02, titled Improving Investment Advice for Workers & Retirees, described below.

In May 2024, litigation was brought by the Federation of Americans for Consumer Choice (FACC) in the United States District Court for the Eastern District of Texas, and by the American Council of Life Insurers (ACLI) in the United States District Court for the Northern District of Texas, challenging the 2024 Fiduciary Rule. The ACLI also challenged the amendments to PTE 2020–02 adopted on April 25, 2024. On July 25 and 26, 2024, the district court for the Eastern District of Texas and the district court for the Northern District of Texas, respectively, granted motions staying the effective date of the 2024 Fiduciary Rule. *Fed'n of Ams. for Consumer Choice, Inc.* v. *U.S. Dep't of Labor,* 742 F. Supp. 3d 677, 702 (E.D. Tex. 2024); *Am. Council of Life Insurers* v. *U.S. Dep't of Labor,* No. 4:24–cv–482–O, 2024 WL 3572297, at *9 (N.D. Tex. Jul. 26, 2024). The district court for the Northern District of Texas also stayed the effective date of the amendments to PTE 2020–02.[3]

[1] 89 FR 32122 (Apr. 25, 2024).

[2] 40 FR 50842 (Oct. 31, 1975).

[3] The United States District Court for the Northern District of Texas also stayed the effective date of the amendments to PTEs 75–1, 77–4, 80–83, 83–1, 84–24, and 86–128. 24 WL 3572297, at *1, *9. The United States District Court for the Eastern District of Texas also stayed the effective dates of the amendments to PTE 84–24.

2. Litigation Related to Five-Part Test Regulation

On December 18, 2020, the Department adopted PTE 2020–02, a prohibited transaction exemption under ERISA and the Code, permitting investment advice fiduciaries with respect to employee benefit plans and IRAs to receive compensation that would otherwise be prohibited, in the absence of an exemption, subject to certain conditions. PTE 2020–02 expressly covers prohibited transactions resulting from both rollover advice and advice on how to invest assets within a plan or IRA. The preamble to PTE 2020–02, in addition to describing its terms, also provided the Department's interpretation of the Five-part Test Regulation. Among other matters, the preamble provided guidance on when advice to roll over plan assets to an IRA would be considered fiduciary investment advice under the Five-part Test Regulation. In April 2021, the Department issued further guidance in a set of ''Frequently Asked Questions'' (2021 FAQs), including FAQ 7, which related to rollover advice under the Five-part Test Regulation and built on guidance provided in the preamble to PTE 2020–02.

In February 2022, the FACC brought litigation in the United States District Court for the Northern District of Texas challenging the Department's guidance in the preamble of PTE 2020–02 with respect to rollover advice and to the regular basis requirement of the Five-part Test Regulation. Also in February 2022, the American Securities Association (ASA) brought litigation in the United States District Court for the Middle District of Florida challenging the ''policies referenced in'' FAQ 7. On February 13, 2023, the district court in the ASA case vacated the ''policy referenced in FAQ 7.'' *Am. Sec. Ass'n* v. *U.S. Dep't of Labor,* 22–cv–00330–VMC, 2023 WL 1967573, at *22 (M.D. Fla. Feb. 13, 2023). On May 16, 2023, the United States Department of Justice voluntarily withdrew its appeal of the ASA ruling. With respect to the FACC challenge, on June 30, 2023, a United States Magistrate Judge issued Findings, Conclusions, and Recommendations of the United States Magistrate Judge on Plaintiffs' Motion for Summary Judgment and Defendants' Cross-Motion to Dismiss for Lack of Jurisdiction or, in the Alternative, for Summary Judgment. *Fed'n of Ams. for Consumer Choice, Inc.* v. *U.S. Dep't of Labor,* No. 3:22–cv–243–K–BT, 2023 WL 5682411 (N.D. Tex. June 30, 2023). On July 9, 2025, the district court in the FACC case issued an order accepting the Magistrate Judge's Findings, Conclusions, and Recommendations, and vacating portions of the preamble to PTE 2020–02 in which the Department interpreted the Five-part Test Regulation. Order Accepting Findings and Recommendation of the United States Magistrate Judge. *Fed'n of Ams. for Consumer Choice, Inc.* v. *U.S. Dep't of Labor,* No. 3:22–cv–243–K–BT, 2025 WL 1898668 (N.D. Tex. July 9, 2025).

3. Effect of Litigation

The 2024 orders by the district courts in the Eastern and Northern Districts of Texas stayed the effective date of the 2024 Fiduciary Rule, which left in place the prior regulatory text, *i.e.,* the Five-part Test Regulation. The 2024 order of the district court in the Northern District of Texas stayed the effective date of the 2024 amendments to PTE 2020–02, leaving in place PTE 2020–02 as adopted on December 18, 2020. Further, these orders remain undisturbed because of the dismissal of the consolidated appeal by the U.S. Court of Appeals for the Fifth Circuit, dated November 28, 2025,[4] and the final judgment in the district courts dated March 12, 2026, in the Eastern District of Texas and March 17, 2026, in the Northern District of Texas. Because the 2024 Fiduciary Rule never became effective, and the Five-part Test Regulation was never replaced, this document takes the administrative steps necessary to conform the regulatory text in the CFR.

Even though PTE 2020–02 has remained operative, its preamble is no longer reliable due to the courts' vacaturs in the 2022 litigation. In the *ASA* ruling, prior to vacating the ''policy referenced in FAQ 7,'' the district court observed that the ''policy referenced in FAQ 7'' also is referenced in the preamble to PTE 2020–02. *American Securities Ass'n,* 2023 WL 1967573, at *10. Moreover, although the court in FACC vacated only portions of the preamble to PTE 2020–02, the matters addressed in those vacated portions interrelate with matters and guidance in other portions of the preamble to such an extent that the Department is no longer confident in the soundness of the remaining portions of the preamble. The scope and style of the courts' vacaturs leave in their wake too much ambiguity regarding what portions of the preamble guidance remain valid and reliable. For example, while some portions of the preamble may lack an express connection to fiduciary investment advice, fiduciary investment advice is nonetheless the foundation on which the entire preamble discussion is based, making it difficult to determine whether and/or the extent the retention of portions of the preamble would frustrate the intention of the courts. To protect stakeholders from relying on preamble language that either has been directly invalidated by the courts' vacaturs, or preamble language that may be rendered logically flawed or misinterpreted as a direct or indirect consequence of the courts' vacaturs, the Department, in this document, clarifies its view that the entire preamble of PTE 2020–02 is effectively vacated.

What is not ambiguous, however, is that neither district court questioned the procedural aspects of the Department's grant of PTE 2020–02, including the Department's required findings under section 408(a) of ERISA and section 4975(c)(2) of the Code that PTE 2020–02 is administratively feasible, in the interests of plans and their participants and beneficiaries and IRA owners, and protective of the rights of participants and beneficiaries of plans and IRA owners. These findings continue to be expressed through the exemption's conditions, which are set forth below. Accordingly, today's action (like the courts' vacaturs), which leaves in full effect each term and condition of PTE 2020–02 as originally granted, has no impact on any finding underpinning PTE 2020–02, including the Department's findings under section 408(a) of ERISA and section 4975(c)(2) of the Code. As a matter of convenience for interested persons, Part II of this document is republishing in full the text of PTE 2020–02, without the amendments adopted on April 25, 2024. This ministerial action reflects the judicial actions discussed above and affects no legal rights or obligations and imposes no costs.[5]

4. Procedural and Other Matters

The Administrative Procedure Act provides that when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. 5 U.S.C. 553(b)(B). The Department has determined that there is good cause for dispensing with public comments in

[4] *Fed'n of Ams. for Consumer Choice, Inc. et al.,* v. *U.S. Dep't of Labor,* Nos. 24–40637 and 24–10890 (5th Cir. Nov. 28, 2025) (order dismissing appeal pursuant to appellant's motion).

[5] EBSA's website will be updated to reflect the applicability of the pre-amendment version of the affected exemptions (including 75–1, 77–4, 80–83, 83–1, 84–24, and 86–128).

this case, inasmuch as this final rule merely conforms the text in the CFR to reflect the mandate of the courts' decisions by removing the 2024 Fiduciary Rule from the CFR and replacing it with the Five-part Test Regulation. Because the Department is merely giving effect to the courts' orders, and is not exercising discretion with respect to this action, any notice and comment process would be unnecessary (*e.g.,* because no comment could impact the Department's responsibility to follow legal orders), impracticable (*e.g.,* because the Department's actions are required by legal orders), and contrary to the public interest (*e.g.,* because a notice and comment process would serve only to slow down the finalization of, and the coordination of public policy clarity associated with, a result already mandated by the courts). In 2020, the Department made similar findings in connection with implementing a judicial vacatur of a final rule relating to fiduciary investment advice adopted in 2016.[6]

Likewise, while notice and an opportunity to comment are rights granted to citizens subject to the rulemaking process, the Department is under no obligation to provide such rights in the absence of a final agency action. In this case, the preamble of today's final rule provides notice that the Department no longer considers the preamble to PTE 2020–02 to be reliable guidance considering the effects of two courts' vacaturs of portions of that preamble. But this interpretive position regarding that preamble is not final agency action triggering notice and comment. In the Department's view, just as the original making of the preamble to PTE 2020–02 was interpretive action and not final agency action triggering notice and comment rights, unmaking that preamble interpretively in the preamble to today's final rule likewise does not trigger notice and comment rights. 5 U.S.C. 553(b)(A). Further, to the extent the act of vacating the preamble to PTE 2020–02 is the type of action that could have triggered the APA's notice and comment rights, it was the two district courts—through their vacaturs—that mandated action, and not the Department which is merely giving effect to the courts' orders in a responsible manner.

This final rule has been determined to be not a significant regulatory action for purposes of Executive Orders 12866 and 13563. Additionally, no analysis is required under the Regulatory Flexibility Act or Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999, because, for the reasons discussed above, the Department is not required to engage in notice and comment under the Administrative Procedure Act. This final rule does not have significant Federalism implications under Executive Order 13132. The Office of Information and Regulatory Affairs has determined that this final rule is not a significant regulatory action under Executive Order 12866. The final rule is not subject to the requirements of the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3501 *et seq.*), because it does not contain a collection of information as defined in 44 U.S.C. 3502(3).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. This final action is administrative and only implements the district courts' rulings. Accordingly, the Department has determined that good cause exists, and that this technical amendment is not subject to the timing requirements of the Congressional Review Act.

Part II. Republication of PTE 2020–02

This section republishes in full the operative text of PTE 2020–02 as originally published in the **Federal Register** on December 18, 2020.[7] PTE 2020–02 is not codified in the CFR.

Section I—Transactions

(a) In general. ERISA Title I (Title I) and the Internal Revenue Code (the Code) prohibit fiduciaries, as defined, that provide investment advice to Plans and individual retirement accounts (IRAs) from receiving compensation that varies based on their investment advice and compensation that is paid from third parties. Title I and the Code also prohibit fiduciaries from engaging in purchases and sales with Plans or IRAs on behalf of their own accounts (principal transactions). This exemption permits Financial Institutions and Investment Professionals who provide fiduciary investment advice to Retirement Investors to receive otherwise prohibited compensation and engage in riskless principal transactions and certain other principal transactions (Covered Principal Transactions) as described below. The exemption provides relief from the prohibitions of ERISA section 406(a)(1)(A), (D), and 406(b), and the sanctions imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A), (D), (E), and (F), if the Financial Institutions and Investment Professionals provide fiduciary investment advice in accordance with the conditions set forth in Section II and are eligible pursuant to Section III, subject to the definitional terms and recordkeeping requirements in Sections IV and V.

(b) Covered transactions. This exemption permits Financial Institutions and Investment Professionals, and their Affiliates and Related Entities, to engage in the following transactions, including as part of a rollover from a Plan to an IRA as defined in Code section 4975(e)(1)(B) or (C), as a result of the provision of investment advice within the meaning of ERISA section 3(21)(A)(ii) and Code section 4975(e)(3)(B):

(1) The receipt of reasonable compensation; and

(2) The purchase or sale of an asset in a riskless principal transaction or a Covered Principal Transaction, and the receipt of a mark-up, mark-down, or other payment.

(c) Exclusions. This exemption does not apply if:

(1) The Plan is covered by Title I of ERISA and the Investment Professional, Financial Institution or any Affiliate is (A) the employer of employees covered by the Plan, or (B) a named fiduciary or plan administrator with respect to the Plan that was selected to provide advice to the Plan by a fiduciary who is not independent of the Financial Institution, Investment Professional, and their Affiliates;

(2) The transaction is a result of investment advice generated solely by an interactive website in which computer software-based models or applications provide investment advice based on personal information each investor supplies through the website, without any personal interaction or advice with an Investment Professional (*i.e.,* robo-advice); or

(3) The transaction involves the Investment Professional acting in a fiduciary capacity other than as an investment advice fiduciary within the meaning of the regulations at 29 CFR 2510.3–21(c)(1)(i) and (ii)(B) or 26 CFR 54.4975–9(c)(1)(i) and (ii)(B) setting forth the test for fiduciary investment advice.

Section II—Investment Advice Arrangement

Section II requires Investment Professionals and Financial Institutions to comply with Impartial Conduct Standards, including a best interest

[6] *See* 85 FR 40589 (July 7, 2020).

[7] 85 FR 82798, 82862 (Dec. 18, 2020).

standard, when providing fiduciary investment advice to Retirement Investors. In addition, the exemption requires Financial Institutions to acknowledge fiduciary status under Title I and/or the Code, and describe in writing the services they will provide and their material Conflicts of Interest. Finally, Financial Institutions must adopt policies and procedures prudently designed to ensure compliance with the Impartial Conduct Standards when providing fiduciary investment advice to Retirement Investors and conduct a retrospective review of compliance.

(a) *Impartial Conduct Standards.* The Financial Institution and Investment Professional comply with the following ''Impartial Conduct Standards'':

(1) Investment advice is, at the time it is provided, in the Best Interest of the Retirement Investor. As defined in Section V(b), such advice reflects the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor, and does not place the financial or other interests of the Investment Professional, Financial Institution or any Affiliate, Related Entity, or other party ahead of the interests of the Retirement Investor, or subordinate the Retirement Investor's interests to their own;

(2)(A) The compensation received, directly or indirectly, by the Financial Institution, Investment Professional, their Affiliates and Related Entities for their services does not exceed reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2); and (B) as required by the federal securities laws, the Financial Institution and Investment Professional seek to obtain the best execution of the investment transaction reasonably available under the circumstances; and

(3) The Financial Institution's and its Investment Professionals' statements to the Retirement Investor about the recommended transaction and other relevant matters are not, at the time statements are made, materially misleading.

(b) *Disclosure.* Prior to engaging in a transaction pursuant to this exemption, the Financial Institution provides the disclosures set forth in (1) and (2) to the Retirement Investor:

(1) A written acknowledgment that the Financial Institution and its Investment Professionals are fiduciaries under Title I and the Code, as applicable, with respect to any fiduciary investment advice provided by the Financial Institution or Investment Professional to the Retirement Investor;

(2) A written description of the services to be provided and the Financial Institution's and Investment Professional's material Conflicts of Interest that is accurate and not misleading in all material respects; and

(3) Prior to engaging in a rollover recommended pursuant to the exemption, the Financial Institution provides the documentation of specific reasons for the rollover recommendation, required by Section II(c)(3), to the Retirement Investor.

(c) *Policies and Procedures.*

(1) The Financial Institution establishes, maintains, and enforces written policies and procedures prudently designed to ensure that the Financial Institution and its Investment Professionals comply with the Impartial Conduct Standards in connection with covered fiduciary advice and transactions.

(2) Financial Institutions' policies and procedures mitigate Conflicts of Interest to the extent that a reasonable person reviewing the policies and procedures and incentive practices as a whole would conclude that they do not create an incentive for a Financial Institution or Investment Professional to place their interests ahead of the interest of the Retirement Investor.

(3) The Financial Institution documents the specific reasons that any recommendation to roll over assets from a Plan to another Plan or an IRA as defined in Code section 4975(e)(1)(B) or (C), from an IRA as defined in Code section 4975(e)(1)(B) or (C) to a Plan, from an IRA to another IRA, or from one type of account to another (*e.g.,* from a commission-based account to a fee-based account) is in the Best Interest of the Retirement Investor.

(d) *Retrospective Review.*

(1) The Financial Institution conducts a retrospective review, at least annually, that is reasonably designed to assist the Financial Institution in detecting and preventing violations of, and achieving compliance with, the Impartial Conduct Standards and the policies and procedures governing compliance with the exemption.

(2) The methodology and results of the retrospective review are reduced to a written report that is provided to a Senior Executive Officer.

(3) A Senior Executive Officer of the Financial Institution certifies, annually, that:

(A) The officer has reviewed the report of the retrospective review;

(B) The Financial Institution has in place policies and procedures prudently designed to achieve compliance with the conditions of this exemption; and

(C) The Financial Institution has in place a prudent process to modify such policies and procedures as business, regulatory, and legislative changes and events dictate, and to test the effectiveness of such policies and procedures on a periodic basis, the timing and extent of which is reasonably designed to ensure continuing compliance with the conditions of this exemption.

(4) The review, report and certification are completed no later than six months following the end of the period covered by the review.

(5) The Financial Institution retains the report, certification, and supporting data for a period of six years and makes the report, certification, and supporting data available to the Department, within 10 business days of request, to the extent permitted by law including 12 U.S.C. 484.

(e) *Self-Correction.* A non-exempt prohibited transaction will not occur due to a violation of the exemption's conditions with respect to a transaction, provided:

(1) Either the violation did not result in investment losses to the Retirement Investor or the Financial Institution made the Retirement Investor whole for any resulting losses;

(2) The Financial Institution corrects the violation and notifies the Department of Labor of the violation and the correction via email to *IIAWR@dol.gov* within 30 days of correction;

(3) The correction occurs no later than 90 days after the Financial Institution learned of the violation or reasonably should have learned of the violation; and

(4) The Financial Institution notifies the person(s) responsible for conducting the retrospective review during the applicable review cycle and the violation and correction is specifically set forth in the written report of the retrospective review required under subsection II(d)(2).

Section III—Eligibility

(a) General. Subject to the timing and scope provisions set forth in subsection (b), an Investment Professional or Financial Institution will be ineligible to rely on the exemption for 10 years following:

(1) A conviction of any crime described in ERISA section 411 arising out of such person's provision of investment advice to Retirement

Investors, unless, in the case of a Financial Institution, the Department grants a petition pursuant to subsection (c)(1) below that the Financial Institution's continued reliance on the exemption would not be contrary to the purposes of the exemption ; or

(2) Receipt of a written ineligibility notice issued by the Department for (A) engaging in a systematic pattern or practice of violating the conditions of this exemption in connection with otherwise non-exempt prohibited transactions; (B) intentionally violating the conditions of this exemption in connection with otherwise non-exempt prohibited transactions; or (C) providing materially misleading information to the Department in connection with the Financial Institution's or Investment Professional's conduct under the exemption; in each case, as determined by the Department pursuant to the process described in subsection (c).

(b) Timing and Scope of Ineligibility.

(1) An Investment Professional shall become ineligible immediately upon (A) the date of the trial court's conviction of the Investment Professional of a crime described in subsection (a)(1), regardless of whether that judgment remains under appeal; or (B) the date of the written ineligibility notice described in subsection (a)(2), issued to the Investment Professional.

(2) A Financial Institution shall become ineligible following (A) the 10th business day after the conviction of the Financial Institution or another Financial Institution in the same Controlled Group of a crime described in subsection (a)(1) regardless of whether that judgment remains under appeal, or, if the Financial Institution timely submits a petition described in subsection (c)(1) during that period, 21 days after the date of the Department's written denial of the petition; or (B) 21 days after the date of the written ineligibility notice, described in subsection (a)(2), issued to the Financial Institution or another Financial Institution in the same Controlled Group.

(3) Controlled Group. A Financial Institution is in the same Controlled Group with another Financial Institution if it would be considered in the same ''controlled group of corporations'' or ''under common control'' with the Financial Institution, as those terms are defined in Code section 414(b) and (c), in each case including the accompanying regulations.

(4) Winding Down Period. Any Financial Institution that is ineligible will have a one-year winding down period during which relief is available under the exemption subject to the conditions of the exemption other than eligibility. After the one-year period expires, the Financial Institution may not rely on the relief provided in this exemption for any additional transactions.

(c) *Opportunity to be heard.*

(1) Petitions under subsection (a)(1).

(A) A Financial Institution that has been convicted of a crime described under subsection (a)(1) or another Financial Institution in the same Controlled Group may submit a petition to the Department informing the Department of the conviction and seeking a determination that the Financial Institution's continued reliance on the exemption would not be contrary to the purposes of the exemption. Petitions must be submitted, within 10 business days after the date of the conviction, to the Department by email at *IIAWR@dol.gov.*

(B) Following receipt of the petition, the Department will provide the Financial Institution with the opportunity to be heard, in person or in writing or both. The opportunity to be heard in person will be limited to one in-person conference unless the Department determines in its sole discretion to allow additional conferences.

(C) The Department's determination as to whether to grant the petition will be based solely on its discretion. In determining whether to grant the petition, the Department will consider the gravity of the offense; the relationship between the conduct underlying the conviction and the Financial Institution's system and practices in its retirement investment business as a whole; the degree to which the underlying conduct concerned individual misconduct, or, alternately, corporate managers or policy; how recent was the underlying lawsuit; remedial measures taken by the Financial Institution upon learning of the underlying conduct; and such other factors as the Department determines in its discretion are reasonable in light of the nature and purposes of the exemption. The Department will provide a written determination to the Financial Institution that articulates the basis for the determination.

(2) Written ineligibility notice under subsection (a)(2). Prior to issuing a written ineligibility notice, the Department will issue a written warning to the Investment Professional or Financial Institution, as applicable, identifying specific conduct implicating subsection (a)(2), and providing a six-month opportunity to cure. At the end of the six-month period, if the Department determines that the conduct persists, it will provide the Investment Professional or Financial Institution with the opportunity to be heard, in person or in writing or both, before the Department issues the written ineligibility notice. The opportunity to be heard in person will be limited to one in-person conference unless the Department determines in its sole discretion to allow additional conferences. The written ineligibility notice will articulate the basis for the determination that the Investment Professional or Financial Institution engaged in conduct described in subsection (a)(2).

(d) A Financial Institution or Investment Professional that is ineligible to rely on this exemption may rely on a statutory or separate administrative prohibited transaction exemption if one is available or seek an individual prohibited transaction exemption from the Department. To the extent an applicant seeks retroactive relief in connection with an exemption application, the Department will consider the application in accordance with its retroactive exemption policy as set forth in 29 CFR 2570.35(d). The Department may require additional prospective compliance conditions as a condition of retroactive relief.

Section IV—Recordkeeping

The Financial Institution maintains for a period of six years records demonstrating compliance with this exemption and makes such records available, to the extent permitted by law including 12 U.S.C. 484, to any authorized employee of the Department or the Department of the Treasury.

Section V—Definitions

(a) ''Affiliate'' means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Investment Professional or Financial Institution. (For this purpose, ''control'' would mean the power to exercise a controlling influence over the management or policies of a person other than an individual);

(2) Any officer, director, partner, employee, or relative (as defined in ERISA section 3(15)), of the Investment Professional or Financial Institution; and

(3) Any corporation or partnership of which the Investment Professional or Financial Institution is an officer, director, or partner.

(b) Advice is in a Retirement Investor's ''Best Interest'' if such advice reflects the care, skill, prudence, and

diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor, and does not place the financial or other interests of the Investment Professional, Financial Institution or any Affiliate, Related Entity, or other party ahead of the interests of the Retirement Investor, or subordinate the Retirement Investor's interests to their own.

(c) A ''Conflict of Interest'' is an interest that might incline a Financial Institution or Investment Professional—consciously or unconsciously—to make a recommendation that is not in the Best Interest of the Retirement Investor.

(d) A ''Covered Principal Transaction'' is a principal transaction that:

(1) For sales to a Plan or an IRA:

(A) Involves a U.S. dollar denominated debt security issued by a U.S. corporation and offered pursuant to a registration statement under the Securities Act of 1933, a U.S. Treasury Security, a debt security issued or guaranteed by a U.S. federal government agency other than the U.S. Department of Treasury, a debt security issued or guaranteed by a government-sponsored enterprise, a municipal security, a certificate of deposit, an interest in a Unit Investment Trust, or any investment permitted to be sold by an investment advice fiduciary to a Retirement Investor under an individual exemption granted by the Department after the effective date of this exemption that includes the same conditions as this exemption; and

(B) If the recommended investment is a debt security, the security is recommended pursuant to written policies and procedures adopted by the Financial Institution that are reasonably designed to ensure that the security, at the time of the recommendation, has no greater than moderate credit risk and sufficient liquidity that it could be sold at or near carrying value within a reasonably short period of time; and

(2) For purchases from a Plan or an IRA, involves any securities or investment property.

(e) ''Financial Institution'' means an entity that is not disqualified or barred from making investment recommendations by any insurance, banking, or securities law or regulatory authority (including any self-regulatory organization), that employs the Investment Professional or otherwise retains such individual as an independent contractor, agent or registered representative, and that is:

(1) Registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) or under the laws of the state in which the adviser maintains its principal office and place of business;

(2) A bank or similar financial institution supervised by the United States or a state, or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)));

(3) An insurance company qualified to do business under the laws of a state, that: (A) Has obtained a Certificate of Authority from the insurance commissioner of its domiciliary state which has neither been revoked nor suspended; (B) has undergone and shall continue to undergo an examination by an independent certified public accountant for its last completed taxable year or has undergone a financial examination (within the meaning of the law of its domiciliary state) by the state's insurance commissioner within the preceding five years, and (C) is domiciled in a state whose law requires that an actuarial review of reserves be conducted annually and reported to the appropriate regulatory authority;

(4) A broker or dealer registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); or

(5) An entity that is described in the definition of Financial Institution in an individual exemption granted by the Department after the date of this exemption that provides relief for the receipt of compensation in connection with investment advice provided by an investment advice fiduciary under the same conditions as this class exemption.

(f) For purposes of subsection I(c)(1), a fiduciary is ''independent'' of the Financial Institution and Investment Professional if: (i) The fiduciary is not the Financial Institution, Investment Professional, or an Affiliate; (ii) the fiduciary does not have a relationship to or an interest in the Financial Institution, Investment Professional, or any Affiliate that might affect the exercise of the fiduciary's best judgment in connection with transactions covered by the exemption; and (iii) the fiduciary does not receive and is not projected to receive within the current federal income tax year, compensation or other consideration for his or her own account from the Financial Institution, Investment Professional, or an Affiliate, in excess of 2% of the fiduciary's annual revenues based upon its prior income tax year.

(g) ''Individual Retirement Account'' or ''IRA'' means any plan that is an account or annuity described in Code section 4975(e)(1)(B) through (F).

(h) ''Investment Professional'' means an individual who:

(1) Is a fiduciary of a Plan or an IRA by reason of the provision of investment advice described in ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B), or both, and the applicable regulations, with respect to the assets of the Plan or IRA involved in the recommended transaction;

(2) Is an employee, independent contractor, agent, or representative of a Financial Institution; and

(3) Satisfies the federal and state regulatory and licensing requirements of insurance, banking, and securities laws (including self-regulatory organizations) with respect to the covered transaction, as applicable, and is not disqualified or barred from making investment recommendations by any insurance, banking, or securities law or regulatory authority (including any self-regulatory organization).

(i) ''Plan'' means any employee benefit plan described in ERISA section 3(3) and any plan described in Code section 4975(e)(1)(A).

(j) A ''Related Entity'' is any party that is not an Affiliate, but in which the Investment Professional or Financial Institution has an interest that may affect the exercise of its best judgment as a fiduciary.

(k) ''Retirement Investor'' means:

(1) A participant or beneficiary of a Plan with authority to direct the investment of assets in his or her account or to take a distribution;

(2) The beneficial owner of an IRA acting on behalf of the IRA; or

(3) A fiduciary of a Plan or an IRA.

(l) A ''Senior Executive Officer'' is any of the following: The chief compliance officer, the chief executive officer, president, chief financial officer, or one of the three most senior officers of the Financial Institution.

End of PTE 2020–02

Statutory Authority

This regulation is issued pursuant to the authority in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894; 29 U.S.C. 1135) and section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 237, and under Secretary of Labor's Order No. 1–2011, 77 FR 1088 (Jan. 9, 2012).

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Pensions.

For the reasons stated in the preamble, the Department is amending part 2510 of subchapter B of chapter XXV of title 29 of the Code of Federal Regulations as follows:

SUBCHAPTER B—DEFINITIONS AND COVERAGE UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2510—DEFINITIONS OF TERMS USED IN SUBCHAPTERS C, D, E, F, AND G OF THIS CHAPTER

■ 1. The authority citation for part 2510 continues to read as follows:

Authority: 29 U.S.C. 1002(1)–(8), 1002(13)–(16), 1002(20), 1002(21), 1002(34), 1002(37), 1002(38), 1002(40)–(44), 1031, and 1135; Div. O, Title I, Sec. 101, Public Law 116–94, 133 Stat. 2534 (Dec. 20, 2019); Div. T, Title I, Sec. 105, Public Law 117–328, 136 Stat. 4459 (Dec. 29, 2022); Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012); Secs. 2510.3–21, 2510.3–101 and 2510.3–102 also issued under Sec. 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 752 (2018) (E.O. 12108, 44 FR 1065 (Jan. 3, 1979)), and 29 U.S.C. 1135 note. Section 2510.3–38 also issued under Sec. 1(b) Public Law 105–72, 111 Stat. 1457 (Nov. 10, 1997).

■ 2. Revise § 2510.3–21 to read as follows:

§ 2510.3–21 Definition of ''Fiduciary.''

(a)–(b) [Reserved]

(c) *Investment advice.* (1) A person shall be deemed to be rendering ''investment advice'' to an employee benefit plan, within the meaning of section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 (the Act) and this paragraph, only if:

(i) Such person renders advice to the plan as to the value of securities or other property, or makes recommendation as to the advisability of investing in, purchasing, or selling securities or other property; and

(ii) Such person either directly or indirectly (*e.g.,* through or together with any affiliate)—

(A) Has discretionary authority or control, whether or not pursuant to agreement, arrangement or understanding, with respect to purchasing or selling securities or other property for the plan; or

(B) Renders any advice described in paragraph (c)(1)(i) of this section on a regular basis to the plan pursuant to a mutual agreement, arrangement or understanding, written or otherwise, between such person and the plan or a fiduciary with respect to the plan, that such services will serve as a primary basis for investment decisions with respect to plan assets, and that such person will render individualized investment advice to the plan based on the particular needs of the plan regarding such matters as, among other things, investment policies or strategy, overall portfolio composition, or diversification of plan investments.

(2) A person who is a fiduciary with respect to a plan by reason of rendering investment advice (as defined in paragraph (c)(1) of this section) for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or having any authority or responsibility to do so, shall not be deemed to be a fiduciary regarding any assets of the plan with respect to which such person does not have any discretionary authority, discretionary control or discretionary responsibility, does not exercise any authority or control, does not render investment advice (as defined in paragraph (c)(1) of this section) for a fee or other compensation, and does not have any authority or responsibility to render such investment advice, provided that nothing in this paragraph shall be deemed to:

(i) Exempt such person from the provisions of section 405(a) of the Act concerning liability for fiduciary breaches by other fiduciaries with respect to any assets of the plan; or

(ii) Exclude such person from the definition of the term ''party in interest'' (as set forth in section 3(14)(B) of the Act) with respect to any assets of the plan.

(d) *Execution of securities transactions.* (1) A person who is a broker or dealer registered under the Securities Exchange Act of 1934, a reporting dealer who makes primary markets in securities of the United States Government or of an agency of the United States Government and reports daily to the Federal Reserve Bank of New York its positions with respect to such securities and borrowings thereon, or a bank supervised by the United States or a State, shall not be deemed to be a fiduciary, within the meaning of section 3(21)(A) of the Act, with respect to an employee benefit plan solely because such person executes transactions for the purchase or sale of securities on behalf of such plan in the ordinary course of its business as a broker, dealer, or bank, pursuant to instructions of a fiduciary with respect to such plan, if:

(i) Neither the fiduciary nor any affiliate of such fiduciary is such broker, dealer, or bank; and

(ii) The instructions specify:

(A) The security to be purchased or sold;

(B) A price range within which such security is to be purchased or sold, or, if such security is issued by an open-end investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*), a price which is determined in accordance with Rule 22c–1 under the Investment Company Act of 1940 (17 CFR 270.22c–1);

(C) A time span during which such security may be purchased or sold (not to exceed five business days); and

(D) The minimum or maximum quantity of such security which may be purchased or sold within such price range, or, in the case of a security issued by an open-end investment company registered under the Investment Company Act of 1940, the minimum or maximum quantity of such security which may be purchased or sold, or the value of such security in dollar amount which may be purchased or sold, at the price referred to in paragraph (d)(1)(ii)(B) of this section.

(2) A person who is a broker-dealer, reporting dealer, or bank which is a fiduciary with respect to an employee benefit plan solely by reason of the possession or exercise of discretionary authority or discretionary control in the management of the plan or the management or disposition of plan assets in connection with the execution of a transaction or transactions for the purchase or sale of securities on behalf of such plan which fails to comply with the provisions of paragraph (d)(1) of this section, shall not be deemed to be a fiduciary regarding any assets of the plan with respect to which such broker-dealer, reporting dealer or bank does not have any discretionary authority, discretionary control or discretionary responsibility, does not exercise any authority or control, does not render investment advice (as defined in paragraph (c)(1) of this section) for a fee or other compensation, and does not have any authority or responsibility to render such investment advice, provided that nothing in this paragraph shall be deemed to:

(i) Exempt such broker-dealer, reporting dealer, or bank from the provisions of section 405(a) of the Act concerning liability for fiduciary breaches by other fiduciaries with respect to any assets of the plan; or

(ii) Exclude such broker-dealer, reporting dealer, or bank from the definition, of the term ''party in interest'' (as set forth in section 3(14)(B) of the Act) with respect to any assets of the plan.

(e) *Affiliate and control.* (1) For purposes of paragraphs (c) and (d) of this section, an ''affiliate'' of a person shall include:

(i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person;

(ii) Any officer, director, partner, employee or relative (as defined in

section 3(15) of the Act) of such person; and

(iii) Any corporation or partnership of which such person is an officer, director or partner.

(2) For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Signed at Washington, DC, this 17th day of March, 2026.

Daniel Aronowitz,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2026–05492 Filed 3–18–26; 4:15 pm]

BILLING CODE 4510–29–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2025–0008]

RIN 0651–AD85

Required Use by Foreign Applicants and Patent Owners of a Patent Practitioner

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) is amending the Rules of Practice in Patent Cases to require patent applicants and patent owners whose domicile is not located within the United States (U.S.) or its territories (hereinafter foreign applicants/inventors and patent owners) to be represented by a registered patent practitioner. A requirement that foreign applicants/inventors and patent owners be represented by a registered patent practitioner will bring the U.S. in line with most other countries that require that such parties be represented by a licensed or registered person of that country. Additionally, this requirement will increase efficiency and enable the USPTO to more effectively use available mechanisms to enforce compliance by all foreign applicants/inventors and patent owners with U.S. statutory and regulatory requirements in patent matters, and enhance the USPTO's ability to respond to false certifications, misrepresentations, and fraud.

DATES: This rule is effective on July 20, 2026.

FOR FURTHER INFORMATION CONTACT: Mark Polutta, Senior Legal Advisor, at (571) 272–7709, or Andrew St. Clair, Legal Advisor, at (571) 270–0238, of the Office of Patent Legal Administration or via email addressed to *patentpractice@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to its authority under 35 U.S.C. 2(b)(2), the USPTO is revising the rules in part 1 of title 37 of the Code of Federal Regulations to require foreign applicants/inventors and patent owners to be represented by a registered patent practitioner, as defined in 37 CFR 1.32(a)(1) (*i.e.,* a registered patent attorney or registered patent agent under 37 CFR 11.6 or an individual given limited recognition under § 11.9(a) or (b) or § 11.16) (hereinafter, registered patent practitioner). Requiring all foreign applicants/inventors and patent owners to be represented by a registered patent practitioner: (1) treats foreign applicants/inventors and patent owners similarly to how U.S. applicants/inventors and patent owners are treated in other countries and harmonizes U.S. practice with the rest of the world; (2) increases efficiency as the USPTO spends significant resources assisting *pro se* applicants (*i.e.,* an applicant who is prosecuting the application without a registered patent practitioner); (3) enables the USPTO to more effectively use available mechanisms to enforce compliance with statutory and regulatory requirements in patent matters; and (4) enhances the USPTO's ability to respond to false certifications, misrepresentations, and fraud.

A. Harmonization of U.S. Practice With Other Intellectual Property (IP) Offices With Respect to Representation

Almost all IP Offices require foreign applicants/inventors and patent owners to be represented by a person licensed or registered in that country. The USPTO is implementing a similar requirement. Requiring foreign applicants/inventors and patent owners to be represented by a registered patent practitioner helps to harmonize patent filing practice across IP Offices.

B. Increase Efficiency

The USPTO utilizes significant resources assisting *pro se* inventors. Requiring foreign applicants/inventors and patent owners to use registered patent practitioners will increase efficiency, as the applications will be in better form for examination. Applications from *pro se* inventors generally require additional processing by the Office of Patent Application Processing (OPAP) because the application papers are often not in condition for publication, examination, or both. Additionally, *pro se* applications usually require patent examiners to spend additional examination time on procedural matters, thereby increasing overall patent application pendency. Implementing this final rule will help allocate USPTO resources to the merits of examination and, accordingly, decrease patent application processing times.

C. Enforce Compliance With U.S. Statutory and Regulatory Requirements

The requirement for representation by a registered patent practitioner is also necessary to enforce compliance by all foreign patent applicants/inventors and patent owners with U.S. statutory and regulatory requirements in patent matters. Registered patent practitioners are subject to the USPTO Rules of Professional Conduct and disciplinary sanctions for violations of those rules. *See* 37 CFR 11.15, 11.20, and 11.100–11.901. Accordingly, registered patent practitioners have, among others, various ethical obligations to the USPTO, including a duty to cooperate with inquiries and investigations. *See, e.g.,* 37 CFR 11.303 and 11.801.

The USPTO has seen an increase in the number of false micro entity certifications to claim a reduction in fees and other false certification documents being filed. False certifications unjustly diminish the monetary resources of the USPTO, and false certifications on petitions or requests to expedite examination result in applications being unjustly advanced out of turn. Requiring submissions to be made by registered patent practitioners subject to the USPTO Rules of Professional Conduct and concomitant disciplinary sanctions imposed by the USPTO Director will make it less likely that the submissions will be signed by an unauthorized party or contain inaccurate or fraudulent statements, particularly with regard to any certification of micro entity status to claim a reduction in fees and any certification relevant to expediting the application.

D. Fraud Mitigation and the Integrity of the U.S. Patent System

Requiring foreign patent applicants/inventors and patent owners to use registered patent practitioners will also facilitate fraud mitigation and protect the integrity of the U.S. patent system. As discussed, registered patent practitioners have a duty to cooperate with investigations and respond to lawful requests for information. *See* 37 CFR 11.801(b). Further, it is professional misconduct for a registered patent